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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,587	08/28/2003	Thomas P. Steele	02013-00	7445

8015 7590 08/18/2005

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EXAMINER

COSTALES, SHRUTI S

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,587

Applicant(s)

STEELE ET AL.

Examiner

Shruti S. Costales

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/04/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement submitted on December 4, 2003 was filed in compliance with the provisions of 37 CFR § 1.97. Accordingly, the information disclosure statement filed by the applicant has been considered by the Examiner.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 602. More particularly, the title of the invention has not been identified in the declaration.

Specification

3. The abstract of the disclosure is objected to because the applicant makes improper use of legal phraseology, such as "comprising". See MPEP § 608.01(b).

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

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The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "A stabilized fragrance candle composition including wax, fragrance, and a stabilizing composition having a UV absorber and a hindered hydroxybenzoate".

Claim Objections

5. Claims 4 and 13 are objected to because both claims recite "dodecylox" which appears to be misspelled and should probably be corrected to "dodecyloxy".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 5, 7-9, 12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hyun et al. (U.S. Patent Number 6,221,115), hereinafter referred to as Hyun.

Hyun discloses compositions containing candle wax stabilized by a UV absorber (Col. 1, lines 5-9) which includes a benzotriazole, a benzophenone, a benzoate, and mixtures thereof (Col. 2, lines 1-67 and Col. 3, lines 1-15). The candle composition also includes fragrances, colorants (Col. 5, lines 29-65) and antioxidants (Col. 4, lines 34-67 and Col. 5, lines 1-28). The benzotriazole includes 2-(2-hydroxy-5-methylphenyl)-2H-benzotriazole and other 2-(2-hydroxyphenyl)-benzotriazoles (Col. 2, lines 27-56). The benzophenone includes 4-octyloxy-2-hydroxybenzophenone and 4-methoxy-2-hydroxybenzophenone (Col. 2, lines 25-26 and lines 58-59). The amount of UV absorber is disclosed to be 0.01 to 10% by weight in combination with a hindered amine, wherein the ratio by weight of the UV absorber and the hindered amine is 4:1 to 1:4 (see claims 1 through 4 at Cols. 17 and 18), therein implying that the UV absorber is present in a range of from about 0.02 to 8% by weight.

In light of the above discussion, it is clear that the presently cited claims are anticipated.

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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9. Claims 3-4, 6, 10-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyun in view of Wood et al. (U.S. Patent Number 6,489,383), hereinafter referred to as Wood.

The discussion above regarding Hyun in paragraph 7 is herein incorporated by reference.

The difference between Hyun and the presently claimed invention is the requirement that the hydroxybenzoate and the hydroxybenzophenones are those compounds as specified in the presently cited claims.

Wood, which is drawn to benzotriazole UV absorbers (Col. 1, lines 58-61), discloses 2-hydroxybenzophenones, for example 4-hydroxy, 4-methoxy, 4-octoxy, 4-decyloxy, 4-dodecyloxy, 4-benzyloxy, 4,2',4'-trihydroxy, and 2'-dihydroxy-4,4'-dimethoxy derivatives (Co. 15, lines 1-14). Further, Wood discloses coadditive stabilizers used in conjunction with the benzotriazoles, wherein the coadditive stabilizers (Col. 20, lines 4-6) are UV absorbers including 2,4-di-tert-butylphenyl-3,5-di-tert-butyl-4-hydroxybenzoate (Col. 21, lines 36-53; see also Col. 19, lines 29-37). It would have been obvious to one of ordinary skill in the art to use interchangeably the UV absorbers of Wood with the UV absorbers of Hyun because these compounds are effective in the protection of dyes present in candle wax from premature degradation and fading (Col. 9, lines 9-11), thereby obtaining the invention as set forth in the presently cited claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shruti S. Costales whose telephone number is (571) 272-8389. The examiner can normally be reached on Monday - Friday, 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

SSC
Shruti S. Costales
August 16, 2005

Vasu Jagannathan
VASU JAGANNATHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700